

Doctors tortured patients at Ontario mental-health centre, judge rules



Danny Joannis, seen in his home in Niagara Falls, Ont., on Wednesday, was a patient at the Oak Ridge division of the Penetanguishene mental-health centre off and on for years, and says he suffered severe abuse.

PETER POWER/THE GLOBE AND MAIL

SEAN FINE >
JUSTICE WRITER
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Patients at a maximum-security mental-health facility in Ontario were tortured by medical doctors over a 17-year period in unethical and degrading human experiments, a judge has ruled in a lawsuit.

The techniques used on the patients between 1966 and 1983 included solitary confinement, as treatment and as punishment; the administration of hallucinogens and delirium-producing drugs, including LSD; and brainwashing methods developed by the CIA, according to Justice Paul Perell of the Ontario Superior Court of Justice.

Some of the patients at the Oak Ridge division of the Penetanguishene mental-health centre in central Ontario had been charged with crimes such as rape, murder and child abuse, and had been found not guilty by reason of insanity; others had simply been committed by their doctors. The Oak Ridge doctors contended that with intensive therapy the patients could someday be freed. An estimated 1,260 patients spent time in the program between roughly 1965 and 1979.

Justice Perell did not find that the doctors acted out of cruelty or malice. Nor did he find that they breached medical standards of the day. But torture is a timeless wrong, he suggested.

"I appreciate that apart from professional renown and advancement, there was no self-serving gratification for the defendant physicians at the expense of the Plaintiffs," Justice Perell wrote in his ruling this month. But "it is a breach of a

A spokeswoman for the Ontario Attorney General, and the lawyers for the two doctors who are being sued, Elliott Barker and Gary Maier, declined to comment while the matter is before the court.

Barring an appeal, the next stage of the drawn-out lawsuit, launched in 2000, will be to determine the harm done to the 31 individuals who are suing, and what damages they are owed. At this point, they have not requested a specific amount.

The ruling comes as correctional authorities across Canada discuss national guidelines for solitary confinement, which they call segregation, and as several legal challenges to the practice are under way in the courts.

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Lawyers for the government and the doctors had asked for the lawsuit to be dismissed because the statutes of limitations on medical malpractice claims ranged from six months to four years. But Justice Perell said the doctors had breached their "fiduciary duty" – the obligations that individuals have when they hold power over another – which wasn't covered by a limitations period when the former patients sued.

Danny Joannise, now 61, was placed in Oak Ridge just before turning 15, and spent most of the next 34 years inside. One part of his treatment for his borderline personality disorder was "the Capsule Program," in which up to seven patients were cuffed to one another and placed naked in a small, windowless, continually lit room for days on end, and given food through a straw in the wall.

In an interview, Mr. Joannise described rebelling and being placed in solitary confinement for several days at a time. He said he was tied up in a "turkey" position, with his ankles cuffed to each other and tied to his waist, and left in that position for two weeks. "The pain was unbearable," he said. "All I know is, I'll never get back what I lost."

Joel Rochon of Toronto, one of the lawyers who represented the former patients, said the decision "highlights the importance of holding physicians, and the governments that employ them, accountable for breaches of fiduciary duties toward vulnerable populations, notwithstanding the passage of time."

The doctors being sued said the aim was to force the patients to undergo self-discovery and take responsibility for their behaviour; the drugs were intended to remove their defence mechanisms. Dr. Barker himself, in a paper he published in 1968, raised the spectre of Nazi experiments on human beings and said his own experiments were different.

"If the process were one of eradicating a set of disapproved ideas and washing in different social values, then we would be committing offences as grievous as those involved in setting up the Third Reich – indeed, the more sinister, because of their subtlety." The difference, he wrote, was that the patients had not chosen their values. "On the other hand, if our patients did not choose to deviate from society's norms, but rather were driven to such deviations by internal unresolved conflicts, then we should help them to resolve such conflicts by every means at our disposal, including force, humiliation and deprivation, if necessary."

Justice Perell was clearly appalled by the paragraph. He opened his ruling with an excerpt from the Hippocratic Oath, and then contrasted it with Dr. Barker's paragraph. He returned to it in discussing a 1978 report commissioned by the Ontario Ombudsman, based on 36 hours spent at the centre over three visits, that found "the impossible is apparently happening – psychopaths are being treated with success." Justice Perell commented dryly: "They apparently agreed ... that force,

humiliation, deprivation and offences more sinister and grievous than those involved in setting up the Third Reich would

The ruling's application to current cases of solitary confinement is unclear. Correctional officials are not typically seen by courts as being in a fiduciary relationship with prisoners – but there are exceptions, such as when the prisoners are mentally ill, according to Efrat Arbel, who teaches at the University of British Columbia's Allard School of Law.

"Where mental disability is at issue, and where the facts of the case show not just the expectation of trust but also a profound power imbalance ... it is my opinion that a fiduciary relationship can, in some cases, be established," she said in an e-mail.

Lisa Kerr, who teaches at Queen's University law school, read the ruling at The Globe's request and called it a "grim reminder of the risks of abuse in closed institutional settings, where notions of justified treatment of inmates can become very twisted. The case reminds us of the need for strict legal standards and oversight over all aspects of institutional life, but particularly over any internal form of 'segregation,' 'punishment' or 'treatment.'"

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351 King Street East, Suite 1600, Toronto, ON Canada, M5A 0N1
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